

Feb 20, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER WESTGATE
BARRETT,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:17-CV-0044-JTR

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 14, 15. Attorney Dana Chris Madsen represents Christopher Westgate Barrett (Plaintiff); Special Assistant United States Attorney Franco L. Bacia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

Plaintiff filed an application for Supplemental Security Income (SSI) on January 3, 2013, alleging disability since July 1, 2000, due to depression, deformed patellar tendon in right knee, slipped discs in back, pericarditis, personality

1 disorder, dyslexia, ADD, and short term memory loss. Tr. 194, 198. Plaintiff's
2 applications were denied initially and upon reconsideration.

3 Administrative Law Judge (ALJ) Jesse K. Shumway held a hearing on July
4 29, 2015, Tr. 31-73, and issued an unfavorable decision on September 3, 2015, Tr.
5 11-21. The Appeals Council denied review on December 1, 2016. Tr. 1-6. The
6 ALJ's September 2015 decision thus became the final decision of the
7 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §
8 405(g). Plaintiff filed this action for judicial review on January 30, 2017. ECF
9 No. 1, 4.

10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized
13 here.

14 Plaintiff was born on August 27, 1986, and was 14 years old on the alleged
15 onset date, July 1, 2000, and 26 years old on the date the application for SSI was
16 filed, January 3, 2013. Tr. 57, 194-196. He obtained a GED in 2007 and also
17 completed specialized job training in truck driving in 2008. Tr. 199. Plaintiff
18 testified at the administrative hearing that he last worked in 2011. Tr. 59. His
19 disability report indicates he stopped working in December 2011 because of his
20 condition(s). Tr. 199.

21 Plaintiff stated he received mental health treatment from Frontier Behavioral
22 Health about six months prior to the July 2015 administrative hearing but
23 discontinued those services after only about a month because he was no longer
24 experiencing symptoms of depression. Tr. 47. He testified his psychological
25 symptoms had gone away. Tr. 64-65.

26 With respect to physical issues, Plaintiff indicated he has daily chest pain,
27 but his doctors had been unable to determine a cause for the issue. Tr. 59-60. He
28 stated that if he stays seated or lies down, the chest pain will typically dissipate.

1 Tr. 60. He reported he therefore stays in bed most of the day. Tr. 60. Plaintiff
2 testified he also has dull pain in his right knee and that it would give out on him
3 about five times a week. Tr. 61. He indicated he had been prescribed a cane for
4 the ailment, but he no longer used the cane. Tr. 60-61. Plaintiff stated he has
5 stomach issues, but all tests on his colon and abdomen had been negative. Tr. 61.
6 He testified that approximately 15 days a month he has diarrhea which requires
7 him to use the bathroom 20 times a day. Tr. 62. Plaintiff lastly indicated he has
8 sharp lower back pain due to four slipped discs. Tr. 65-66.

9 Plaintiff testified he could walk about two miles in one stretch, stand about
10 half-an-hour at one time, and sit about two hours before needing to stand up and
11 move around. Tr. 62-63. Plaintiff stated that his daily activities consisted of
12 mostly lying in bed. Tr. 64. When asked why he lies in bed most of the day, he
13 responded, "because I have nothing else to do really." Tr. 66.

14 **STANDARD OF REVIEW**

15 The ALJ is responsible for determining credibility, resolving conflicts in
16 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
17 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
18 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
19 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
20 only if it is not supported by substantial evidence or if it is based on legal error.
21 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
22 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
23 1098. Put another way, substantial evidence is such relevant evidence as a
24 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
25 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
26 rational interpretation, the Court may not substitute its judgment for that of the
27 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
28 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the

1 administrative findings, or if conflicting evidence supports a finding of either
2 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
3 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
4 supported by substantial evidence will be set aside if the proper legal standards
5 were not applied in weighing the evidence and making the decision. *Brawner v.*
6 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

7 **SEQUENTIAL EVALUATION PROCESS**

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
10 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through
11 four, the burden of proof rests upon the claimant to establish a *prima facie* case of
12 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is
13 met once the claimant establishes that a physical or mental impairment prevents
14 the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),
15 416.920(a)(4). If the claimant cannot perform past relevant work, the ALJ
16 proceeds to step five, and the burden shifts to the Commissioner to show that (1)
17 the claimant can make an adjustment to other work; and (2) specific jobs which the
18 claimant can perform exist in the national economy. *Batson v. Commissioner of*
19 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If the claimant cannot
20 make an adjustment to other work in the national economy, a finding of "disabled"
21 is made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

22 **ADMINISTRATIVE DECISION**

23 On September 3, 2015, the ALJ issued a decision finding Plaintiff was not
24 disabled as defined in the Social Security Act.

25 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
26 activity since the January 3, 2013, application date. Tr. 13.

27 At step two, the ALJ determined Plaintiff had the following severe
28 impairments: somatoform disorder, personality disorder and depression. Tr. 13.

1 At step three, the ALJ found Plaintiff did not have an impairment or
2 combination of impairments that meets or medically equals the severity of one of
3 the listed impairments. Tr. 14.

4 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
5 determined he could perform a range of medium exertion level work with the
6 following additional limitations: he can only frequently climb stairs and ramps,
7 stoop, kneel, crouch, crawl and climb ropes, ladders, or scaffolds; he must avoid
8 concentrated exposure to pulmonary irritants and hazards; he can perform only
9 simple, routine, repetitive tasks with a reasoning level of two or less; he is capable
10 of only simple decision-making in a routine, predictable environment; and he can
11 have no contact with the public and only superficial contact with supervisors and
12 coworkers. Tr. 14-15.

13 At step four, the ALJ found Plaintiff was unable to perform any of his past
14 relevant work. Tr. 19. However, at step five, the ALJ determined that based on
15 the testimony of the vocational expert, and considering Plaintiff's age, education,
16 work experience and RFC, Plaintiff could perform other jobs present in significant
17 numbers in the national economy, including the jobs of kitchen helper, industrial
18 cleaner and laborer stores or warehouse worker. Tr. 19-20. The ALJ thus
19 concluded Plaintiff was not under a disability within the meaning of the Social
20 Security Act at any time from January 3, 2013, the SSI application date, through
21 the date of the ALJ's decision, September 3, 2015. Tr. 20-21.

22 **ISSUES**

23 The question presented is whether substantial evidence supports the ALJ's
24 decision denying benefits and, if so, whether that decision is based on proper legal
25 standards.

26 Plaintiff contends the ALJ erred by (1) improperly discrediting Plaintiff's
27 symptom claims; and (2) failing to properly consider and weigh the medical
28 opinion evidence of record.

DISCUSSION

A. Plaintiff's Symptom Testimony

Plaintiff first contends the ALJ erred by improperly discrediting his symptom claims. ECF No. 14 at 11-15.

5 It is the province of the ALJ to make credibility determinations. *Andrews*,
6 53 F.3d at 1039. However, the ALJ's findings must be supported by specific
7 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
8 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
9 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d
10 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).
11 "General findings are insufficient: rather the ALJ must identify what testimony is
12 not credible and what evidence undermines the claimant's complaints." *Lester*, 81
13 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

14 In this case, the ALJ found Plaintiff's medically determinable impairments
15 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's
16 statements concerning the intensity, persistence and limiting effects of these
17 symptoms were not entirely credible. Tr. 16.

1. Objective Medical Evidence

19 The ALJ indicated the objective medical evidence of record did not
20 substantiate Plaintiff's claimed level of impairment. Tr. 16.

21 A lack of supporting objective medical evidence is a factor which may be
22 considered in evaluating an individual's credibility, provided it is not the sole
23 factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991); *Carmickle*, 533
24 F.3d at 1161 ("Contradiction with the medical record is a sufficient basis for
25 rejecting the claimant's subjective testimony."); *Lingenfelter v. Astrue*, 504 F.3d
26 1028, 1040 (9th Cir. 2007) (in determining credibility, the ALJ may consider
27 "whether the alleged symptoms are consistent with the medical evidence").

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1 The ALJ noted that although Plaintiff alleged a complete inability to work,
2 his activities and the medical reports overall do not support significant limitations.
3 Tr. 16. The ALJ stated “[t]here is a wide gulf between the claimant’s allegations
4 and the medical evidence,” Tr. 16, and noted Plaintiff has a history of numerous
5 visits to the ER for a variety of physical complaints, but no serious problems have
6 ever been detected, Tr. 15. The ALJ’s statements are supported by the record
7 which reflects unremarkable medical findings. *See e.g.* Tr. 680 (April 2015
8 medical record stating Plaintiff just had a major work up for heart disease and it
9 was negative); Tr. 683 (April 2015 medical record indicating Plaintiff reported he
10 has had EKG, X-Ray, U.S., and endoscopy with nothing significant found); Tr.
11 698 & 700 (February 2014 and September 2013 reports indicating Plaintiff
12 presented with more complaints than findings); and Tr. 417 & 431 (March 2013
13 and July 2012 reports of normal medical examinations following ER visit). Tr. 15.
14 Moreover, Plaintiff testified that his psychological symptoms had dissipated, Tr.
15 64-65, and, with respect to his physical complaints, his doctors “have no idea why
16 [he was] having chest pain,” Tr. 59.

17 As indicated by the ALJ, the objective medical evidence of record does not
18 support the disabling symptoms and limitations alleged by Plaintiff in this case.
19 Tr. 15-16. This was a proper basis for the ALJ to conclude Plaintiff was not
20 entirely credible.

21 **2. Inconsistency**

22 The ALJ also described an inconsistency with Plaintiff’s testimony. Tr. 16.
23 In assessing the weight accorded to a claimant’s statements, an ALJ may engage in
24 ordinary techniques of credibility evaluation, such as considering claimant’s
25 reputation for truthfulness and inconsistencies in claimant’s testimony. *Burch v.*
26 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005); *Tonapetyan v. Halter*, 242 F.3d 1144,
27 1148 (9th Cir. 2001). When a claimant fails to be a reliable historian, “this lack of
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1 candor carries over” to other portions of his testimony. *Thomas v. Barnhart*, 278
2 F.3d 947, 959 (9th Cir. 2002).

3 The ALJ noted Plaintiff’s statements about frequent diarrhea were not
4 consistent with the record or even his own reports to medical providers during the
5 relevant time period. Tr. 16.

6 Plaintiff testified he has abdominal issues and, as a result, he has diarrhea
7 which requires him to use the bathroom 20 times a day about 15 days out of a
8 month. Tr. 62. However, an ER record from March 1, 2013, states that Plaintiff’s
9 report of a single episode of diarrhea over a two-hour span of time was a new
10 symptom. *See* Tr. 417 (stating that “[t]he only thing that is new is this single
11 episode of diarrhea”). Another ER record, dated August 31, 2012, indicates
12 Plaintiff experienced nausea and diarrhea from food he ingested at Pig-Out in the
13 Park, but that he did not have a history of these symptoms to suggest a serious
14 condition. Tr. 427-428. Finally, an August 15, 2014, medical report noted
15 Plaintiff’s abdominal issue may have been the result of his “good deal of
16 [marijuana]” usage, but there is no mention of Plaintiff experiences bouts of
17 diarrhea. Tr. 15, 691-692.

18 It was entirely proper for the ALJ to note the foregoing inconsistency in
19 finding Plaintiff’s subjective complaints less than fully credible in this case.

20 **3. Motivation**

21 The ALJ additionally mentioned Plaintiff’s “very weak work history.” Tr.
22 16.

23 An ALJ may properly consider the issue of motivation in assessing
24 credibility. *Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992). The Ninth
25 Circuit has held that “poor work history” or a showing of “little propensity to
26 work” during one’s lifetime may be considered as a factor which negatively affects
27 a claimant’s credibility. *Thomas*, 278 F.3d at 959.

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1 The ALJ indicated Plaintiff's limited work history suggested Plaintiff was
2 not particularly motivated or interested in working, thus calling into question
3 whether it was his impairments or his lack of desire to work that caused him to
4 seek disability. Tr. 16. Given the record supports the ALJ's finding in this regard
5 (limited work history), it was not improper for the ALJ to note Plaintiff's "very
6 weak work history" when assessing his credibility in this case.

7 **4. Drug-Seeking Behavior**

8 The ALJ next found that Plaintiff had displayed a pattern of drug-seeking
9 behavior, which undermined his credibility. Tr. 16.

10 An ALJ may properly consider evidence of a claimant's substance use in
11 assessing credibility. *See Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir.
12 2001) (ALJ properly considered a claimant's drug-seeking behavior).

13 As noted by the ALJ, the record reflects Plaintiff made frequent ER visits
14 with vague, unsubstantiated pain complaints. Tr. 16, 417-434. Plaintiff was
15 eventually informed that no further narcotics would be prescribed by his primary
16 care physician. Tr. 16, 692. In addition, medical expert H.C. Alexander testified
17 that Plaintiff's frequent trips to emergency rooms in different places within the
18 community possibly demonstrated drug-seeking behavior. Tr. 13, 45. The ALJ
19 determined this pattern called into question whether Plaintiff was actually
20 experiencing pain or was only interested in obtaining narcotic pain medication. Tr.
21 16. Again, the ALJ's finding regarding Plaintiff's drug-seeking behavior is
22 supported by the evidence of record; therefore, it was proper for the ALJ to note
23 the drug-seeking behavior in finding Plaintiff's subjective complaints less than
24 fully credible in this case.

25 **5. Mental Health Treatment**

26 The ALJ found that Plaintiff's infrequent mental health treatment and rarely
27 mentioned mental health symptoms, which he alleges are disabling, also
28 diminished his credibility. Tr. 16.

1 In assessing a claimant's credibility, an ALJ properly relies upon
2 "unexplained or inadequately explained failure to seek treatment or to follow a
3 prescribed course of treatment." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th
4 Cir. 2008) (quoting *Smolen*, 80 F.3d at 1284); *Fair*, 885 F.2d at 603. "[I]f the
5 frequency or extent of the treatment sought by an individual is not comparable with
6 the degree of the individual's subjective complaints, or if the individual fails to
7 follow prescribed treatment that might improve symptoms, we may find the
8 alleged intensity and persistence of an individual's symptoms are inconsistent with
9 the overall evidence of record." SSR 16-3p. Furthermore, an "unexplained, or
10 inadequately explained, failure to seek treatment may be the basis for an adverse
11 credibility finding unless one of a 'number of good reasons for not doing so'
12 applies." *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).

13 As noted by the ALJ, Plaintiff received mental health treatment on a very
14 infrequent basis and rarely mentioned mental health problems to providers. Tr. 16.
15 Plaintiff cites the Ninth Circuit's *Nguyen* decision for the proposition that "it is a
16 questionable practice to chastise one with a mental impairment for the exercise of
17 poor judgment in seeking rehabilitation." *Nguyen v. Chater*, 100 F.3d 1462, 1465
18 (9th Cir. 1996) (quoting *Blankenship v. Bowen*, 874 F.2d 1116, 1124 (6th Cir.
19 1989)); ECF No. 14 at 14-15. Here, however, Plaintiff testified he received about
20 a month of mental health treatment from Frontier Behavioral Health about six
21 months prior to the July 2015 administrative hearing but discontinued those
22 services because he was no longer experiencing symptoms of depression. Tr. 47.
23 Plaintiff specifically stated that his psychological symptoms have gone away. Tr.
24 64-65; *see e.g. Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 600 (9th
25 Cir. 1999) (an ALJ may properly rely on a report that a claimant's mental
26 symptoms improved with the use of medication to find a claimant's testimony
27 unpersuasive); *Odle v. Heckler*, 707 F.2d 439, 440 (9th Cir. 1983) (noting
28 impairments that are controlled by treatment cannot be considered disabling).

1 The ALJ logically concluded that if Plaintiff's mental health problems were
2 not severe enough to motivate him to continue treatment, it was difficult to accept
3 his assertion that they were disabling. Tr. 16. The ALJ did not err by relying, in
4 part, upon Plaintiff's failure to continue to seek mental health treatment in
5 concluding Plaintiff's subjective complaints were less than fully credible.

6 The ALJ is responsible for reviewing the evidence and resolving conflicts or
7 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
8 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
9 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
10 determining whether the ALJ's decision is supported by substantial evidence and
11 may not substitute its own judgment for that of the ALJ even if it might justifiably
12 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After
13 reviewing the record, the Court finds that the ALJ provided clear and convincing
14 reasons, which are fully supported by the record, for discounting Plaintiff's
15 subjective complaints. Accordingly, the ALJ did not err by finding Plaintiff's
16 allegations were not entirely credible in this case.

17 **B. Medical Source Opinions**

18 Plaintiff contends that the ALJ erred by failing to accord weight to the
19 mental health limitations assessed by W. Scott Mabee, Ph.D., and John Arnold,
20 Ph.D. ECF No. 14 at 15-17.

21 Here, the ALJ found the medical evidence did not support the degree of
22 psychological limitations alleged by Plaintiff. Instead, the ALJ determined
23 Plaintiff retained the RFC to perform simple, routine, repetitive tasks with a
24 reasoning level of two or less; was capable of simple decision-making in a routine,
25 predictable environment; and could have no contact with the public and only
26 superficial contact with supervisors and coworkers. Tr. 14-15. The Court finds
27 that this RFC determination is fully supported by the record. *See infra*.

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1 On August 3, 2010, Dr. Mabee filled out a Psychological/Psychiatric
2 Evaluation form and checked a box indicating Plaintiff's ability to interact
3 appropriately in public contacts was markedly impaired. Tr. 285-290. However,
4 Dr. Mabee concluded that Plaintiff's symptoms would last a maximum of nine
5 months. Tr. 289; 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A) (an individual shall
6 be considered disabled if he has an impairment which can be expected to result in
7 death or which has lasted or can be expected to last for a continuous period of not
8 less than 12 months). In any event, Dr. Mabee wrote that Plaintiff was capable of
9 understanding and carrying out simple instructions, could concentrate for short to
10 moderate periods of time, would work better with hands-on tasks, could work
11 without close supervision and not disrupt others, would work best in positions with
12 minimal interaction with others, and could adapt to small changes in a work
13 environment. Tr. 288.

14 On May 4, 2011, Dr. Arnold also completed a Psychological/Psychiatric
15 Evaluation form. Tr. 360-364. This check-box form did not assess any marked or
16 severe mental functional limitations. Tr. 362. It was noted that Plaintiff was
17 enrolled at Spokane Community College and taking weight training and fitness
18 classes. Tr. 363. Dr. Arnold indicated that Plaintiff was capable of understanding
19 and following simple instructions, could recall locations and simple work-related
20 procedures, and would be able to adhere to basic standards of hygiene and
21 cleanliness. Tr. 362.

22 Dr. Mabee filled out another Psychological/Psychiatric Evaluation form on
23 September 8, 2011. Tr. 392-395. On this occasion, the check-box form did not
24 assess any marked or severe mental functional limitations. Tr. 393. Consistent
25 with Dr. Arnold's May 2011 assessment, Dr. Mabee opined that Plaintiff was
26 capable of understanding and following simple instructions, could recall locations
27 and simple work-related procedures, and would be able to adhere to basic
28 standards of hygiene and cleanliness. Tr. 393.

1 Dr. Arnold completed a second Psychological/Psychiatric Evaluation form on
2 February 24, 2012. Tr. 405-408. Dr. Arnold again wrote that Plaintiff was capable
3 of understanding and following simple instructions, could recall locations and
4 simple work-related procedures, and would be able to adhere to basic standards of
5 hygiene and cleanliness. Tr. 406.

6 Dr. Mabee completed yet another Psychological/Psychiatric Evaluation form
7 on January 3, 2013. Tr. 397-400. Again, the check-box form did not assess any
8 marked or severe psychiatric limitations. Tr. 399.

9 The ALJ assigned the foregoing medical reports “partial weight” because
10 they were not supported with much explanation. Tr. 18. However, the ALJ
11 indicated he generally credited the opinions, with the exception of the checked box
12 opinions which were not consistent with the benign findings noted in the record.
13 Tr. 18.

14 First, it is significant to note that the reports of Drs. Arnold and Mabee
15 predate the relevant time period¹ in this matter. *See Fair v. Bowen*, 885 F.2d 597,
16 600 (9th Cir. 1989) (medical opinions that predate the alleged onset of disability
17 are of limited relevance). Evidence from outside of the relevant time period can be
18 deemed useful as background information; however, it is irrelevant to the extent
19 that it does not address Plaintiff’s medical status during the relevant period at issue
20 in this action.

21 Next, as indicated in Section A, Plaintiff testified at the July 2015
22 administrative hearing that he no longer experiences symptoms of depression and
23 his psychological symptoms have since dissipated. Tr. 47, 64-65. Plaintiff
24 specifically stated he discontinued mental health treatment after only about a
25

26 ¹Plaintiff is ineligible for SSI disability benefits for any month including and
27 preceding January 2013, the month he filed his SSI disability application. 20
28 C.F.R. § 416.330, 416.335; SSR 83-20.

1 month of services because he no longer experienced any mental health symptoms.
2 Tr. 47. If Plaintiff's mental health issues did not require continued treatment, it
3 would appear the significant psychological limitations assessed on the check-box
4 portions of the reports of Drs. Arnold and Mabee are unsupported.

5 Finally, the ALJ discounted only the check-box portions of the reports as
6 unsupported and inconsistent with the weight of the record evidence. Tr. 18;
7 *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (stating that the ALJ's rejection
8 of a check-off report that did not contain an explanation of the bases for the
9 conclusions made was permissible).

10 The evidence of record, including the narrative portions of the reports of
11 Drs. Arnold and Mabee, does not support a more restrictive RFC than limiting
12 Plaintiff to the performance of simple, routine, repetitive tasks with a reasoning
13 level of two or less; simple decision-making in a routine, predictable environment;
14 and no contact with the public and only superficial contact with supervisors and
15 coworkers. Tr. 14-15. Accordingly, the ALJ did not err with respect to his
16 findings regarding the reports of Drs. Arnold and Mabee.

17 It is the responsibility of the ALJ to determine credibility, resolve conflicts
18 in medical testimony and resolve ambiguities, *Saelee v. Chater*, 94 F.3d 520, 522
19 (9th Cir. 1996), and this Court may not substitute its own judgment for that of the
20 ALJ, 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings
21 justifying a decision, and those findings are supported by substantial evidence in
22 the record, this Court's role is not to second-guess that decision. *Fair*, 885 F.2d at
23 604. Based on the foregoing, the Court finds the ALJ's interpretation of the
24 medical record is supported by the weight of the evidence of record.

25 **CONCLUSION**

26 Having reviewed the record and the ALJ's findings, the Court finds the
27 ALJ's decision is supported by substantial evidence and free of legal error.
28 Accordingly, **IT IS ORDERED:**

1. Defendant's Motion for Summary Judgment, ECF No. 15, is
GRANTED.

2. Plaintiff's Motion for Summary Judgment, ECF No. 14, is DENIED.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED February 20, 2018.



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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE